

ATTACHMENT A

[copy of Plaintiff-SPENCER PLANTATION's First Amended Original Petition in
Forcible Detainer Case, exclusive of exhibits, follows]

Filed for Record
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Joyce Hudman, County Clerk
Brazoria County, Texas
CI52465
Brandi Anderson, Deputy

CAUSE NO. CI52465

SPENCER PLANTATION
INVESTMENTS, LTD.

VS.

MICHAEL A. McCANN

§
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§
§
§
§

IN THE COUNTY COURT

AT LAW NO. 1

BRAZORIA COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

Plaintiff, SPENCER PLANTATION INVESTMENTS, LTD., files this First Amended Original Petition against defendant, MICHAEL A. McCANN and alleges as follows:

A. Parties

1. "Plaintiff", SPENCER PLANTATION INVESTMENTS, LTD., is a Texas limited partnership, doing business in Brazoria County, Texas.
2. "Defendant" MICHAEL A. McCANN is an individual and may be served with process at defendant's usual place of abode in Brazoria County at 201 Jim Hogg Avenue, West Columbia, Texas 77486 or usual place of business at 324 N. Brooks St., Brazoria, Texas 77422, or wherever Defendant may be found.

B. Relief

3. Plaintiff seeks monetary relief of \$100,000 or less and nonmonetary relief. Tex. R. Civ. P.48(c)(2).

C. Jurisdiction & Venue

4. This County Court at Law has jurisdiction and venue over this lawsuit because this suit, at its inception in the Justice of the Peace Court, is for eviction and this is the county where the property at issue is located.

This is a trial de nova resulting from an appeal of the Justice Court order awarding possession to Plaintiff.

D. Facts

5. On March 10, 2014, the following described property was offered for sale at public auction by the Internal Revenue Service and the property was then and there purchased by Plaintiff for the sum of \$189,000.00. After a 180 day redemption period expired, the property was deeded to Plaintiff by the United States of America in deed dated October 21, 2014 from United States of

COPY

American to Spencer Plantation Investments, Ltd., recorded under Clerk's File No. 2014046784, Official Records, Brazoria County, Texas, which describes the following described property:

TRACT A:

BEING A 64.648 ACRE TRACT OF LAND, A PORTION OF WHICH IS OUT OF THE GEORGE MELGARD CALLED 140.0 ACRE TRACT, SAID TRACT BEING RECORDED IN VOLUME 143, PAGE 508 OF THE DEED RECORDS OF BRAZORIA COUNTY, TEXAS. SAID 64.648 ACRE TRACT OF LAND BEING OUT OF THE STEPHEN F. AUSTIN 7 1/3 LEAGUE GRANT, ABSTRACT 20, BRAZORIA COUNTY, TEXAS SAID 64.648 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT A ATTACHED HERETO; and,

TRACT B:

THE SURFACE AND SURFACE ONLY OF A PARCEL OF LAND CONTAINING 9.615 ACRE TRACT. BEING A 9.615 ACRE TRACT OF LAND, BEING ALL OF THE S.J. MATULA CALLED 7.578 ACRE TRACT, SAID TRACT BEING A PORTION OF THE GEORGE MELGARD CALLED 140.0 ACRE TRACT, AS RECORDED IN VOLUME 143, PAGE 508, DEED RECORDS OF BRAZORIA COUNTY, TEXAS, AND ALSO A PORTION OF THE S.J. MATULA CALLED 28.50 ACRE TRACT, SAID MATULA TRACT BEING THE SOUTH 1/4 OF TRACT 11D OF THE STEPHEN F. AUSTIN 7 1/3 LEAGUE GRANT, ABSTRACT NO. 20, BRAZORIA COUNTY, TEXAS, SAID 9.615 ACRE TRACT BEING MORE FULLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT A ATTACHED HERETO,

Also Known As Tract A-BACD # 150317 & Tract B-BACD #619719.

A copy of said Deed is attached hereto as Exhibit "A-1".

6. Upon acquiring the above referenced deed, Plaintiff paid all delinquent property taxes owing on the Property and has continued to pay all property taxes as the same have come due.
7. On October 30, 2014, Defendant was given written notice to vacate the property by certified mail, return receipt requested, regular mail, and by posting the notice to vacate on the property. Plaintiff attaches a copy of the Notice to Vacate as Exhibit "B", and incorporates it by reference. Defendant had until November 21, 2014 to vacate the premises, but Defendant remained on the property after the time to vacate had expired.

Plaintiff seeks possession of the property.

Defendant refuses to surrender possession of the property.

8. On December 10, 2014, Spencer Plantation Investments, Ltd., Plaintiff, filed Plaintiff's Petition in the Justice Court of Precinct No. 4, Place 2, Brazoria County, Texas, seeking possession of the property, Case No. HEV14-0344. On December 22, 2014, Defendant filed a sworn Petition to Quiet Title against Spencer Plantation Investments, Ltd. and the Internal Revenue Service in Cause No. 79855-CV, 23rd Judicial District Court of Brazoria County, Texas (hereinafter referred

to as the "District Court Case". As a result of the filing of this District Court Case, which asserted issues involving the title to the land involved, further proceedings in this lawsuit were abated, pending adjudication of the issues relating to land title in the District Court Case..

On December 29, 2014, Judgment was rendered in Cause No. HEV14-033, Justice of the Peace Court of Precinct No. 4, Place 2, Brazoria County, Texas awarding possession of the property to Spencer Plantation Investments, Ltd., a copy of which is attached as Exhibit "C".

On January 5, 2015, Defendant McCann filed a Notice of Appeal in Cause No. HEV14-033, Justice of the Peace Court of Precinct No. 4, Place 2, Brazoria County, Texas, thereby appealing the instant case to this Court.

On January 20, 2015, the United States of America, on behalf of the Internal Revenue Service, removed this case to the United States District Court for the Southern District of Texas, Houston Division. On April 29, 2015, the United States of America filed its Motion to Dismiss or for Summary Judgment and Brief, a copy of which is attached as Exhibit "D".

On July 1, 2015, Defendant Michael A. McCann filed his pleading entitled "No Nexus With Entity in Question", copy of which is attached as Exhibit "E", wherein McCann argued among other things, that "Michael A. McCann, an American National (*), is NOT within any IRS District geographically or via extension by subject matter".

On July 23, 2015, the United States District Court for the Southern District of Texas, Houston Division entered its Order that the United States of America's Motion to Dismiss is granted and that the remainder of the case is remanded to the 23rd Judicial District Court of Brazoria County, Texas, copy of which Order is attached as Exhibit "P".

On December 28, 2015, Plaintiff, Spencer Plantation Investments, LTD. filed its Motion for Summary Judgment in Cause No. 79855-CV in the District Court of Brazoria County, Texas, 23rd Judicial District.

On January 25, 2016, the 23rd Judicial District Court entered its Order for Final Summary Judgment, copy of which is attached as Exhibit "G".

E. Attorneys fees.

9. Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Property Code, Section 24.006(a). Plaintiff sent Defendant a written notice to vacate that met the statutory requirements for valid notice. Defendant did not vacate the property within 10 days after receiving the notice.

F. Rent

10. Plaintiff is entitled to recover the fair rental value of the property from November 21, 2014 to date of possession calculated as follows:

Annual Rent: Rent per acre per year: Ten Dollars (\$10.00) per acre of land, per year of occupancy, therefor annual rental is in the amount of \$742.63 rent per year. Plaintiff seeks the recovery of unpaid rent from November 21, 2014, through November 20, 2015, in the amount of \$742.63.

Per Diem Rent from November 21, 2015 to eventual date of possession: Rent from November 21, 2014 – November 20, 2015 is based upon the annual rental for the 74.263 acres of land in the amount of \$742.63, and that calculates to \$2.03 per day of occupancy. Plaintiff seeks the recovery of un-paid rentals for the period commencing November 21, 2015 to the date that possession is granted in this proceeding, in the amount of \$2.03 per diem, from and after November 21, 2015.

G. Conditions Precedent

11. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

H. Prayer

12. For these reasons, Plaintiff prays that the Court issue citation for Defendant to appear and answer, and that Plaintiff be awarded judgment against Defendant for possession of the property and for issuance of a writ of possession. In addition, Plaintiff prays for the following relief:

- a. recovery of all court costs incurred;
- b. recovery of its reasonable and necessary attorney's fees;
- c. recovery of unpaid rents; and,
- d. All other relief to which Plaintiff is entitled.

Respectfully submitted,

STEVENS & RAU, P.C.
A Professional Corporation

By: 

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S160086

THE STATE OF TEXAS)
COUNTY OF BRAZORIA)

BEFORE ME, the undersigned authority, on this day personally appeared KENNETH W. GOOLSBY, known to me to be a credible person, who after being duly sworn, states on oath that he is Manager of KING & AMBROSE COMPANY, LLC, a Texas limited liability company and general partner of SPENCER PLANTATION INVESTMENTS, LTD., the Plaintiff in the above-captioned cause; that he has read the foregoing document; and that every statement contained therein is true and correct within his personal knowledge.

SPENCER PLANTATION INVESTMENTS, LTD.
A Texas limited partnership

By: KING & AMBROSE COMPANY, LLC
A Texas limited liability company
its general partner

By: Kenneth W. Goolsby
KENNETH W. GOOLSBY, Manager

THE STATE OF TEXAS)
COUNTY OF BRAZORIA)

Sworn to and subscribed to before me on this the 11th day of February, 2016 by Kenneth W. Goolsby, Manager of KING & AMBROSE COMPANY, LLC, a Texas limited liability company and general partner of SPENCER PLANTATION INVESTMENTS, LTD., on behalf of said partnership.

Susie A. Devens
Notary Public in and for State of Texas

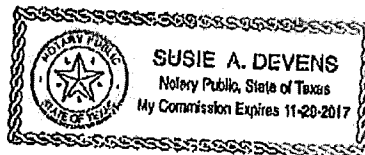


EXHIBIT "A"

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FIELD NOTES

64.648 Acres

Stephen F. Austin 7 1/8 League Grant, Abstract 20

Brazoria County, Texas

07-07-98 MS (FNMATA-258)

TRACT A:

Being a 64.648 Acre Tract of Land, a portion of which is out of the George Melgaard called 140.00 Acre Tract, said Tract being recorded in Volume 149, Page 508 of the Deed Records of Brazoria County, Texas. Said 64.648 Acre Tract of Land being out of the Stephen F. Austin 7 1/8 League Grant, Abstract 20, Brazoria County, Texas. Said 64.648 Acres being more particularly described by metes and bounds as follows:

BEGINNING at a 1" iron pipe, found in the West line of State Highway No. 521, said iron pipe being the Southeast corner of a called 25.00 Acre Tract, known as Tract 11B, said iron pipe also bears South 539.00 feet from the Southeast corner of the George E. Badge called 59.00 Acre Tract, known as Tract 11A, said iron pipe being the most Easterly North corner of this 64.648 Acre Tract;

THENCE South 582.85 feet along the West line of said Stage Highway No. 521, to a 1" iron pipe found in said 25.00 Acre Tract, said Tract being the South-half of Tract 11D, said iron pipe being the most Easterly South corner of this 64.648 Acre Tract;

THENCE South 89° 36' 19" West, (called West), 3407.29 feet along the North line of said Matula Tract to a 1/2" iron rod found for an angle point;

THENCE South 89° 41' 47" West, 922.91 feet, (called West, 924.70 feet), to a 1/2" iron rod found in the West line of said Melgaard Tract for the Southwest corner of this 64.648 Acre Tract;

THENCE North 00° 39' 10" West, 895.65 feet (called North 00° 01' 44.1" West, 895.525 feet), along the West line of said Melgaard Tract, to a 1" iron pipe found at the Northwest corner of said Melgaard Tract for the Northwest corner of this 64.648 Acre Tract;

THENCE South 89° 40' 36" East, 928.07 feet (called South 89° 53' 26.6" West, 928.27 feet), along the North line of said Melgaard Tract to a 1/2" iron rod found at the Northeast corner of said Melgaard Tract for the most Northerly East corner of this 64.648 Acre Tract;

THENCE South 00° 22' 04" East (called South 00° 01' 44.1" East), 313.02 feet to a 1" iron pipe found at the Southwest corner of said Tract 11B for the an interior corner of this 64.648 Acre Tract;

THENCE North 89° 36' 25" East (called East), 3410.32 feet along the South line of said Tract 11B to the PLACE OF BEGINNING, and containing 64.648 Acres of Land, more or less.

Max L. Hagan

MAX L. HAGAN

Registered Professional Land Surveyor No. 937

EXHIBIT "A"

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FIELD NOTES

9.615 Acre Tract

Portion of the George Melgard 140 Acre Tract

Stephen F. Austin 7 1/3 League Grant

Abstract No. 20

Brazoria County, Texas

05-25-99 LE (FNMATA 530)

TRACT B:

Being a 9.615 acre tract of land, being all of the S.J. Matula called 7.578 acre tract, said tract being a portion of the George Melgard called 140 acre tract as recorded in Volume 143, Page 508, Deed Records, Brazoria County, Texas, and also a portion of the S.J. Matula called 28.50 acre tract, said Matula tract being the South 1/4 of Tract 11D of the Stephen F. Austin 7 1/3 League Grant, Abstract No. 20, Brazoria County, Texas. Said 9.615 acre tract being more fully described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found in the West line of said Melgard tract, said rod bears South 00° 39' 10" West, 895.65 feet, called South 00° 01' 44" West, 895.53 feet, along a fence line along said West line of said Melgard tract from a 1" iron pipe found at the Northwest corner of said Melgard tract, said rod being at this Northwest corner of the S.J. Matula called 7.578 acre tract out of said Melgard tract, for the Northwest corner and TRUE PLACE OF BEGINNING of this 9.615 acre tract;

THENCE North 89° 41' 47" East, called East, 922.91 feet along the North line of said Matula called 7.578 acre tract to a 1/2" iron rod found at the Northeast corner of said Matula called 7.578 acre tract, said rod being the Northwest corner of said Matula called 28.50 acre tract, for an angle point of this 9.615 acre tract;

THENCE North 89° 36' 19" East, called East, 249.09 feet along the North line of said Matula called 28.50 acre tract to a 1/2" iron rod set for the Northeast corner of this 9.615 acre tract;

THENCE South 00° 18' 13" East, 357.60 feet to a 1/2" iron rod set in a fence line along the South line of said Matula called 28.50 acre tract for the Southeast corner of this 9.615 acre tract;

THENCE South 89° 48' 24" West, called West, 247.63 feet along a fence line along the said South line of said Matula called 28.50 acre tract to a 1" iron pipe found at the Southwest corner of said Matula called 28.50 acre tract, said rod being the Southeast corner of said Matula called 7.578 acre tract, for an angle point of this 9.615 acre tract;

THENCE South 89° 37' 58" West, 925.31 feet, called West, 923.27 feet, along a fence line along the South line of said Matula called 7.578 acre tract to a 1/2" iron rod found at the Southwest corner of said Matula called 7.578 acre tract, said rod being in the West line of said Melgard tract, for the Southwest corner of this 9.615 acre tract;

THENCE North 00° 09' 11" West, 357.80 feet, called North 00° 01' 44" West, 357.24 feet, along a fence line along the West line of said Matula called 7.578 acre tract, same being the West line of said Melgard tract, to the PLACE OF BEGINNING, containing 9.615 acres of land, more or less.

Max L. Hagan
MAX L. HAGAN

Registered Professional Land Surveyor No. 937

